

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RICHARD A. KIRKHAM,)
Plaintiff,) CASE NO. C05-1162TSZ-MJB
v.)
MICHAEL J. TRICKEY, Presiding Judge,) REPORT AND RECOMMENDATION
King County Superior Court,)
Defendant.)

INTRODUCTION AND SUMMARY CONCLUSION

This is a civil rights action brought pursuant to 42 U.S.C. § 1983. Plaintiff alleges in this action that his federal constitutional rights were violated by Michael J. Trickey, a King County Superior Court Judge, by the King County Superior Court, and by King County during the course of plaintiff's state court criminal proceedings. Plaintiff has been granted leave to proceed with this action *in forma pauperis*. Following a careful review of the record, this Court concludes that this action should be dismissed, prior to service, pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) and (iii).

BACKGROUND

Plaintiff submitted his original complaint to this Court for filing on June 27, 2005. (*See* Dkt.

REPORT AND RECOMMENDATION

PAGE - 1

1 No. 8.) He alleged therein that Judge Trickey gave him poor legal advice. (*Id.*) He further alleged
2 that Judge Trickey violated his First Amendment rights when he signed an order which caused plaintiff
3 to be placed in administrative segregation, and to have his telephone and mail privileges suspended.
4 (Dkt. No. 8.) Finally, plaintiff appeared to allege that Judge Trickey's conduct had had an adverse
5 affect on plaintiff's ongoing state court criminal proceedings. (*Id.*)

6 After reviewing plaintiff's complaint, this Court, on July 15, 2005, issued an Order granting
7 plaintiff leave to proceed with this action *in forma pauperis* and an Order directing plaintiff to show
8 cause why this action should not be dismissed because it appeared that the lone defendant identified by
9 plaintiff in his complaint was immune from damages in this § 1983 action. (Dkt. Nos. 6 and 7.) On
10 July 22, 2005, plaintiff filed a response to this Court's Order to Show Cause together with a motion
11 for an order to amend his complaint. (Dkt. Nos. 9 and 10.) Plaintiff asserted in his response to the
12 Order to Show Cause that his intent was "to sue the County, not the person Michael J. Trickey."
13 (Dkt. No. 9 at 1.) In his motion for an order to amend his complaint, plaintiff requested that the Court
14 amend the caption of his complaint to reflect that the King County Superior Court was also a
15 defendant in this action. (Dkt. No. 10 at 2.)

16 On August 15, 2005, this Court issued an Order denying plaintiff's motion for an order to
17 amend his complaint. (Dkt. No. 11.) The Court noted therein that merely changing the caption of his
18 complaint to include the Superior Court did not alter the fact that plaintiff was still identifying Judge
19 Trickey as the responsible party, or the fact that Judge Trickey was immune from liability for actions
20 taken in his official capacity. (*Id.*) The Court also noted that the King County Superior Court was not
21 a proper defendant in this action and that if plaintiff wished to proceed against King County, he would
22 have to identify a municipal policy or custom which he believed caused his injury. (*Id.*) Plaintiff was
23 granted leave to file an amended complaint within thirty days. On September 13, 2005, plaintiff filed
24 an amended complaint. (Dkt. No. 12.)

DISCUSSION

2 It is plaintiff's amended complaint that is now before this Court for review. Plaintiff appears to
3 allege in his amended complaint that Judge Trickey had him placed in administrative segregation on
4 allegations of violating a no contact order and witness tampering, and had phone and mail restrictions
5 placed on him at the King County Jail, without affording plaintiff a fair hearing. Plaintiff asserts that
6 Judge Trickey's actions resulted in the denial of his rights under the First, Fifth, Sixth, Eighth, and
7 Fourteenth Amendments to the United States Constitution. Plaintiff further alleges in his amended
8 complaint that Judge Trickey had a duty to see that plaintiff was receiving proper medical care for his
9 carpal tunnel syndrome and failed to do so. Finally, plaintiff appears to allege that the King County
10 Superior Court and King County, whom he identifies as additional defendants in his amended
11 complaint, can be held liable under § 1983 if plaintiff shows a breach of duty owed to him as an
12 individual. A careful review of the amended complaint reveals that plaintiff has not adequately alleged
13 a cause of action under § 1983 against any of the defendants identified in that complaint.

Claims Against Judge Trickey

Judicial officers are immune from liability for damages under § 1983 for acts taken within their judicial jurisdiction. *Pierson v. Ray*, 386 U.S. 547, 554-555 (1967). A judge will be subjected to liability only when (1) he acts in the "clear absence of all jurisdiction," or (2) he performs an act that is not judicial in nature. *Stump v. Sparkman*, 435 U.S. 349, 356-57, 360 (1978).

In *Stump*, the Supreme Court explained that the necessary inquiry in determining whether a judge is immune from suit is whether the judge had jurisdiction over the subject matter before him. The Court stated that “the scope of the judge’s jurisdiction must be construed broadly” and that “[a] judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority.” *Stump*, 435 U.S. at 356. The Supreme Court further explained that the relevant inquiry in determining whether an act by a judge is a ‘judicial’ one “relate[s] to the nature

of the act itself; *i.e.*, whether it is a function normally performed by a judge, and to the expectations of the parties, *i.e.*, whether they dealt with the judge in his judicial capacity.” *Id.* at 362.

Plaintiff's allegations against Judge Trickey arise out of proceedings which were conducted by Judge Trickey in his role as a judge of the King County Superior Court. Judge Trickey was, at the time of plaintiff's interactions with him, performing functions normally performed by judges and plaintiff was dealing with Judge Trickey in his judicial capacity at that time. None of the facts alleged by plaintiff suggest to the contrary. Plaintiff's claims against Judge Trickey should therefore be dismissed pursuant to § 1915(e)(2)(B)(iii).

Claims Against King County Superior Court and King County

In order to set forth a *prima facie* case under 42 U.S.C. § 1983, a plaintiff must allege facts showing how individually named defendants caused or personally participated in causing the harm alleged in the complaint. *Arnold v. IBM*, 637 F.2d 1350, 1355 (9th Cir. 1981). A defendant cannot be held liable solely on the basis of supervisory responsibility or position. *Monell v. Department of Social Servs., of City of New York*, 436 U.S. 658, 691-694 (1978). Rather, a plaintiff must allege that a defendant's own conduct violated the plaintiff's civil rights. *City of Canton, Ohio v. Harris*, 489 U.S. 378, 385-90 (1989).

A local government unit or municipality can be sued as a “person” under § 1983. *Monell*, 436 U.S. at 691. However, a municipality cannot be held liable under § 1983 solely because it employs a tortfeasor. *Id.* A plaintiff seeking to impose liability on a municipality under § 1983 must identify a municipal “policy” or “custom” that caused his or her injury. *Bryan County Commissioners v. Brown*, 520 U.S. 397, 403 (1997), citing *Monell* 436 U.S. at 694.

In *Bryan County Commissioners*, the Supreme Court explained that

it is not enough for a § 1983 plaintiff merely to identify conduct properly attributable to the municipality. The plaintiff must also demonstrate that, through its deliberate conduct, the municipality was the “moving force” behind the injury alleged. That is, a plaintiff must show that the municipal action was taken with the requisite degree of

1 culpability and must demonstrate a direct causal link between the municipal action and
2 the deprivation of federal rights.

3 *Bryan County Commissioners*, 520 U.S. at 404.

4 Plaintiff asserts in his amended complaint that the King County Superior Court is a proper
5 party to this action and that King County can be held liable if plaintiff shows a breach of duty owed to
6 him as an individual. As was explained to plaintiff in the Court's August 15, 2005, Order denying
7 plaintiff's motion for an order to amend his complaint, the King County Superior Court, as an entity of
8 King County, is not a proper defendant in this action. *See Nolan v. Snohomish County*, 59 Wn.App.
9 876, 883 (1990) ("in a legal action involving a county, the county itself is the only legal entity capable
10 of suing and being sued.").

11 Moreover, neither plaintiff's allegations against the King County Superior Court nor his
12 allegations against King County are sufficient to state a *prima facie* case under § 1983. The facts
13 alleged by plaintiff in his amended complaint all relate to the conduct of Judge Trickey. Plaintiff fails
14 to offer any specific facts demonstrating that the King County Superior Court or King County,
15 through any form of deliberate conduct, were the moving force behind any of Judge Trickey's alleged
16 unconstitutional conduct. Plaintiff's claims against defendants King County Superior Court and King
17 County should therefore be dismissed pursuant to § 1915(e)(2)(B)(ii).

18 CONCLUSION

19 For the reasons set forth above, this Court recommends that plaintiff's amended complaint, and
20 this action, be dismissed without prejudice.

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1 This Court further recommends that this dismissal be counted as a “strike” under 28 U.S.C. § 1915(g).

2 A proposed Order accompanies this Report and Recommendation.

3 DATED this 26th day of October, 2005.

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MONICA J. BENTON
United States Magistrate Judge

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